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**REMARKS**

1. Applicant thanks the Examiner for his findings, conclusions, and for pointing out the allowability of Claims 27, 37, 38, 42, 43, 46-48, 50, 51, 60-65, 69, 70, 75, 77, and 80-85 if rewritten in independent form and for pointing out the allowability of Claims 11, 12, 40, 41, 45, and 55 if rewritten to overcome rejections under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph and rewritten in independent form.

2. It is noted that Applicant has elected to amend Claims 1, 10, 23, 24, 36, 37, 39-41, 45, 54, 55, 72 to clarify the invention and to cancel Claims 35, 39, and 95-99 solely for the purpose of expediting the patent process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such amendments, Applicant has not and does not in any way narrow the scope of protection to which the Applicant considers the invention herein entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

20 **Hilton Davis / Festo Statement**

The amendments herein were not made for any reason related to patentability. Claims 10, 23, 24, 39, 40, 41, 45, 54, 55, 72 were amended to clarify the invention. As for Claims 36, 37, and 39, changes were implemented to correct dependency. None of the foregoing amendments is related to the pending rejections; all amendments were made for reasons other than patentability.

3. The specification stands objected to as (1) claiming priority to a patent application not copending with the current application and (2) failing to provide a relationship between the current application and U.S. patent application ser. no. 10/472,856.

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5 The Applicant amends the specification at page 1, lines 4-11 to remove the continuation-in-part priority claim to U.S. Patent Application Ser. No. 09/877,529, filed June 8, 2001. The Applicant further amends the priority claim to properly provide continuation-in-part relationship verbiage relating this pending application to U.S. patent application ser. no. 10/472,856, filed September 18, 2003. The Applicant still further amends the priority claim to clarify that U.S. patent application ser. no. 10/472,856, filed September 18, 2003 claims priority from PCT application no. PCT/US03/07065 filed March 7, 10 2003. Accordingly, the current objections to the specification are deemed to be overcome.

4. Claim 10 stands objected to as being unclear.

15 The Examiner states that it is unclear why the clause "comprising any of" is used instead of the term "comprising" as claim elements depend upon other claim elements set forth within the body of Claim 10. The Applicant amends Claim 10 in order to clarify the invention by remove the clause "any of" in the transitional phrase.

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5. Claims 10-12, 23, 24, 39-41, 45, 54, 55, and 72 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

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Claims 10-12, 23, 24, 39, 40, 45, 54, 55, and 72

Claims 10-12

The Applicant further amends Claim 10 in order to clarify the invention by removing the "preferably" clauses and to correct a grammatical error.

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Claim 23

The Applicant amends Claim 23 in order to clarify the invention by removing the "preferably" term.

5 Claim 24

The Applicant amends Claim 24 in order to clarify the invention by removing the "preferably" clause and further to conform with standard claim drafting practices.

10 Claim 39

The Applicant amends Claim 39 in order to clarify the invention by removing the multiple uses of the phrase "in particular" and further to clarify that 1900 to 2500 nm refers to a wavelength range.

15 Claim 40

The Applicant amends Claim 40 in order to clarify the invention by removing the "in particular" clause and to conform with standard claim drafting practices.

20 Claim 45

The Applicant amends Claim 45 in order to clarify the invention by removing the "in particular" clause.

Claim 54

25 The Applicant amends Claim 54 in order to clarify the invention by removing the "preferably" clause.

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Claim 55

The Applicant amends Claim 55 in order to depend from Claim 1 and to provide a proper indefinite article for the term coupling fluid.

5 Claim 72

The Applicant amends Claim 72 in order to clarify the invention by removing the "which may include" clause and substituting standard claim drafting language. The Applicant further amends Claim 72 to correct a grammatical error and to clarify that the confidence intervals are also estimated.

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Accordingly, the current rejection of Claims 10, 23, 24, 39, 40, 45, 54, 55, and 72 and all claims dependent therefrom under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention is deemed to be overcome.

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Claim 41

The Examiner states that Claim 41 depends from Claim 39. The Applicant deems this statement to be in error. Claim 41 currently depends from Claim 40 and Claim 41 properly depends from Claim 40 as Claim 40 provides proper antecedent basis for the "member" element of Claim 41. Accordingly, the rejection of Claim 41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention is deemed to be improper.

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The Applicant amends Claim 41 in order to conform with standard claim drafting practices.

6. Claims 1-3, 6-10, 18-20, 22-26, 28, 29, 34-36, 39, 44, 49, 54, 57, 71-74, 76, 78, 79, and 86-89 stand rejected under 35 U.S.C. § 103(a) as being

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unpatentable over U.S. patent no. 6,040,578 (hereinafter "Malin") in view of U.S. patent no. 5,825,488 (hereinafter "Kohl").

5 The Applicant amends Claim 1 in order to clarify the invention and to overcome the cited art by incorporating all of the claim elements of allowable Claim 38 and intervening Claim 35. Accordingly, the current rejection of Claims 1-3, 6-10, 18-20, 22-26, 28, 29, 34-36, 39, 44, 49, 54, 57, 71-74, 76, 78, 79, and 86-89 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl is deemed to be overcome.

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The Applicant amends Claims 36, 37, and 39 to correct dependencies as a result of the incorporation of the elements of Claim 35 into parent Claim 1.

7. Claims 95 and 96 stand rejected under 35 U.S.C. § 102(b) as being  
15 anticipated by Essenpreis and Claims 97-99 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Essenpreis.

The Applicant cancels Claims 95-99 from the application.

20 8. Claims 4, 5, and 13-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of U.S. patent no. 5,879,373 (hereinafter "Roper").

25 In view of the above described amendments to parent Claim 1, the current rejection of Claims 4, 5, and 13-16 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of U.S. Roper is rendered moot.

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9. Claims 17 and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of U.S. patent no. 5,978,691 (hereinafter "Mills").

5 In view of the above described amendments to parent Claim 1, the current rejection of Claims 17 and 52 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Mills is rendered moot.

10 10. Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of U.S. patent no. 5,632,273 (hereinafter "Suzuki").

15 In view of the above described amendments to parent Claim 1, the current rejection of Claim 30 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Suzuki is rendered moot.

20 11. Claims 21, 58, and 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of U.S. patent no. 5,687,717 (hereinafter "Halpern").

In view of the above described amendments to parent Claim 1, the current rejection of Claims 21, 58, and 68 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Halpern is rendered moot.

25 12. Claim 53 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of U.S. patent no. 5,131,391 (hereinafter "Sakai").

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In view of the above described amendments to parent Claim 1, the current rejection of Claim 53 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Sakai is rendered moot.

- 5 13. Claims 31-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Shemwell.

- 10 In view of the above described amendments to parent Claim 1, the current rejection of Claims 31-33 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Shemwell is rendered moot.

14. Claims 66 and 67 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Thomas.

- 15 In view of the above described amendments to parent Claim 1, the current rejection of Claims 66 and 67 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Kohl in further view of Thomas is rendered moot.

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**CONCLUSION**

In view of the above, the Application is deemed to be in allowable condition. The Examiner is therefore earnestly requested to withdraw all outstanding rejections and objections, allowing the Application to pass to issue as a United States Patent. Should the Examiner have any questions regarding the application, he is respectfully urged to contact Applicant's attorney at (650) 474-8400.

Respectfully submitted,

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